



POLICE DEPARTMENT

March 8, 2013

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Joseph Sordi
Tax Registry No. 917176
Military and Extended Leave Desk
Disciplinary Case No. 2012-7215

The above-named member of the Department appeared before me on January 18, 2013, charged with the following:

1. Said Sergeant Joseph Sordi, assigned to the Transit Bureau District #2, while off-duty, on or about March 26, 2012, within the confines of [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant threatened Person A stating in sum and substance, "I got nothing to lose and you know it; I'll fucking kill you".

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Sergeant Joseph Sordi, assigned to the Transit Bureau District #2, while off-duty, on or about March 28, 2012, within the confines of [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant threatened Christine Dimanti stating in sum and substance, "Fuck me, you're going to die bitch".

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Rudolph Behrmann, Esq., Department Advocate's Office, and Respondent was represented by Andrew Quinn, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to Specification No. 1. The Department moved to dismiss Specification No. 2. A stenographic transcript

of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification No. 1. Specification No. 2 is dismissed.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Richard Langmaack. The Department entered into evidence a compact disc (CD) copy of the 911 tape of Person A's telephone call (Department's Exhibit [DX] 1).

Lieutenant Richard Langmaack

Langmaack has been with the Transit Bureau Investigations Unit for approximately two-and-a-half years as a lieutenant. He conducts some of the internal investigations that involve sergeants or more serious matters.

On April 6, 2012, Langmaack was assigned a case involving Respondent. Langmaack learned that, Respondent's [REDACTED], Person A, alleged that on March 26, 2012, Respondent cornered her either against the counter or the stove, leaned into her and said in a threatening manner, "I'll fucking kill you. I have nothing to lose."

Langmaack learned from his interviews with both Respondent and Person A that Respondent had come to Person A's home to take his daughter to softball practice. After

Respondent's encounter with Person A, he was arrested by Suffolk County Police Department.

Person A was interviewed the night of March 26, 2012, by Queens South Investigations. Langmaack reviewed the transcript of that interview, the arrest report of the incident that day and the 911 call Person A placed to report Respondent's threat (DX 1).

Before closing his case, and after conferring with the Department Advocate's Office, Langmaack was advised to reach out to Person A for her final version of what happened. He guessed that he spoke with Person A in August or September of 2012.

When he spoke with her, Person A confirmed that the incident that she described happened "verbatim". She did not retract her original statement, but said that she would not pursue the charge. She did not want to follow through with the criminal complaint she filed with Suffolk County. She was "basically adamant" that the incident happened, but did not want to see him punished any more. She wanted him to "go back to what he was doing." As far as Langmaack knew, the criminal case against Respondent was closed.

On cross-examination, Langmaack agreed that he was assigned this case approximately a week or two after the incident. He agreed that he was not in Suffolk County at the Person A residence on March 26, 2012. Members from Queens South Investigations originally handled the investigation and interviewed Person A that night. Langmaack did not review an official transcript of their interview with Person A, but did review the UF-49 regarding the investigation. The last time he reviewed this report was "probably early on in the case."

In response to questioning by the Court, Langmaack believed that he listened to Sergeant Russo conducting a Department interview of Person A over the telephone. Neither an audio recording or transcript of the interview was offered into evidence.

On cross-examination, Langmaack indicated that he never met with Person A face-to-face. He agreed that the initial Department summary of Person A's interview contained the investigator's interpretation of what she said. Langmaack agreed that right after the encounter in which Person A said Respondent threatened to kill her, Person A allowed Respondent to walk out the door with their daughter to a softball game.

Langmaack was not certain how long after Respondent made his threat that Person A telephoned 911.¹ He recalled Person A saying to the 911 Operator that Respondent had just made the threat. He did not know if Person A called anyone else before she called 911. Langmaack had cell phone records, but was not sure if they were Person A's or someone else's. He did not know if she used her cell phone or the house phone. He did not know if Person A was still at the house when she made the phone call. He did not know if she called one, two, or five other people from the time of the threat to when she called 911.

Langmaack agreed that he testified on direct that Respondent was called back to the house before he was arrested. After being shown his own summary of his official Department interview of Respondent, Langmaack confirmed that Respondent went and coached his daughter's softball game and when he returned home, he saw Suffolk County police officers were present.

Langmaack did not interview any of the Suffolk County police officers. He agreed that

he did not know whether when Respondent came back to drop off his

¹ During summations, it was confirmed that Person A made the 911 call at 5:55 p.m. (RX B, Suffolk County Police Department 911 Incident Log).

daughter he looked surprised or angry. Langmaack did not know when the Suffolk County Police first confronted Respondent with Person A's allegation what Respondent said or whether he said anything. He did not know if Respondent immediately denied ever threatening Person A. Langmaack explained that he did not interview the Suffolk County Police because he had their written statement and all the other reports from that night.

Langmaack did not know whether the children saw anything. Even if they did, he thought because of their age, they were not "allowed to be interviewed." Langmaack did not try to interview them. He did not read any interviews where the children corroborated what the mother alleged.

When asked by Respondent's attorney whether there was any other evidence to corroborate that Person A was telling the truth when she made her allegation, Langmaack indicated that there was not. He never took a sworn statement from Person A. He believed that Person A gave a sworn statement to Suffolk County Police.

Langmaack agreed that Person A told him that it was the only time in his life that Respondent had ever expressed violence toward her. He explained that that was why Person A was so worried, because Respondent never exhibited that kind of behavior before.

Langmaack was aware that because of Person A's allegation, Respondent was charged with harassment and that the case was dismissed around July 2012.

Transcript of 911 Call Placed on March 26, 2012 at 17:55:31 hours²

Operator: Suffolk Police 516 the location of your emergency?

² The Court asked the Assistant Department Advocate (Advocate) to present a transcript along with the CD and told him the record would be kept open for two weeks. To expedite this, Respondent's attorney offered to transcribe the CD and have it reviewed by the Advocate. The Advocate reviewed the transcript and then forwarded it to the Court.

Person A: Ok. Ok. Hello? Hello? My [REDACTED] just told me he's gonna fucking kill me, he lost everything and he doesn't care.

Operator: Is he there?

Person A: ...gonna kill me. He's taking my daughter to softball practice. I'm in the house; he's also a sergeant in New York City. I already have text messages that he wants to take his own life and he's absolutely off his freaking rocker.

Operator: Ok.

Person A: So he's taking my daughter to Breton Woods Hauppauge for softball practice right now. He just came in the house. I said to him do not come in my house and he just took my daughter to softball practice and he and he came in the house and he came over and he started laughing and he goes "don't think I won't take your life. I'll kill you."

Operator: What is your name?

Person A: He said it with a smirk on his face. I am his [REDACTED], Person A. I am at [REDACTED]

Operator: OK. What's his name?

Person A: Joseph Sordi. Now I have text messages that he wants to kill himself. I have other people that he has said to, alright, he already had whomever, the inspector or somebody was called in his precinct, they know that he had threatened his life. I mean, he's a whack-job. And he's got tons of guns in this house and at his ex-girlfriend's house when he left here and left me with the kids for a 27 year old little girl who now dumped him also because she found out he's off his rocker. I'm just...

Operator: Ok.

Person A: I'm scared.

Operator: Of course.

Person A: I'm literally scared.

Operator: Alright.

Person A: No. No. No. You don't understand. He has a security company. I happen to have automatic weapons in this house in a safe. In the garage that I don't know the code to. He does.

Operator: Ok. Ok. What is your phone number? Verify that for me.

Person A: 3-4-2-0-0-4-0

Operator: Ok. Ok, Person A, we'll get an officer over to you, Ok?

Person A: Ok. and the problem is is he now has my daughter. I don't trust him. I really don't. He could hurt her too.

Operator: I understand. Ok. We'll get an officer over to you, alright?

Person A: Thank you.

Operator: Alright. Ok. Bye bye.

Person A: Bye bye.

On further cross-examination, Langmaack agreed that, in her 911 call, Person A claimed that Respondent had sent her a number of text messages threatening to kill himself. Langmaack had read these text messages and testified, "It was subjective to what the text messages meant." He agreed that there was never a text message from Respondent saying, I am going to kill myself. He agreed that Person A showed him one or two text messages. He could not recall verbatim the substance of those text messages. He thought that one of them said, "I can't believe what my life has come. Please tell me you can handle the kids without me."

Langmaack agreed that Respondent explained to him that he was talking about having to go overseas to get work. Respondent meant that by going overseas, he would not be able to take care of the kids every day. Langmaack confirmed that he never found a single text message from Person A in which Respondent threatened to commit suicide.

Langmaack agreed that Person A also said on the 911 tape that Respondent had told other people he worked with that he was going to commit suicide. Langmaack was unable to corroborate this.

When asked if he found any evidence in his investigation and interviews to suggest that Respondent was suicidal at any time in his life, Langmaack referred to an interview he had with a psychologist who interviewed Respondent. The psychologist said that Respondent had some issues, but she did not elaborate on his diagnosis. When asked if the psychologist ever said that Respondent was suicidal, Langmaack said that was not the word she used.

When the Court asked if the psychologist indicated at all that Respondent might be suicidal, Langmaack said that she described Respondent "as more or less cocky, he had some narcissistic issues, and she wasn't going to approve him to get his weapons back right away."

On further cross-examination, Langmaack agreed that the psychologist called Respondent a narcissist. Langmaack confirmed that a narcissist is someone who is self-absorbed. Langmaack also agreed that the psychologist never called him suicidal or suggested that he was a threat to himself.

When questioned by the Court about what Langmaack meant when he said that both Respondent and Person A conveyed the messages were different, he agreed that he meant that they had different interpretations of what Respondent meant in his text messages.

Respondent's Case

Respondent called Police Officer John Birong as a witness and testified in his own behalf.

Police Officer John Birong

Birong has been a member of the New York City Police Department for about 19 years. He has been assigned to Transit District (TD) 2 since January 2007. Respondent was his supervisor from September or October 2009 until February or March 2012. Towards the end of 2009, Respondent and Birong started to commute together from Long Island to New York City for their joint tours. They also began to socialize and Birong learned about Respondent's family life.

Respondent would drive from his house in Suffolk County to Nassau County. Birong and Respondent would both park at the volunteer firehouse, take one of the cars in the evening, and do the same thing in the morning. The commute from the firehouse to the Command could be as little as 30 minutes, or as long as two hours. Because they worked in the same squad and often had the same schedule, they commuted together several times a week for approximately two years.

They began commuting together while Respondent was still [REDACTED], through his separation and after his divorce. During these commutes, Birong would hear Respondent speaking with Person A. Birong explained that on the way into work when Birong would get in Respondent's car Respondent might be on the cell phone in the middle of a conversation with Person A. That conversation "would continue sometimes almost the entire right [sic] into the command." Sometimes the conversation was on speaker phone and

sometimes Person A's voice was so loud through the phone that Birong could hear her from the passenger seat. He overheard these conversations several times a month.

Birong described these conversations as "sometimes very amicable, and sometimes I would hear Person A get heated on the other end when the subject of -- when money was raised." After attending some parent/teacher conferences, Respondent was concerned that the children weren't getting the tutoring they needed. Birong said Respondent "would question Person A about monies that were supposed to be paid to tutors that the children weren't going to, and she would just get very, very irate instantly when the subject of money came up. And on one occasion when she was on speakerphone, she actually said some things I felt was scary."

Birong testified that Person A said, "You think you can push me around, you think you can hold money back on me. I'll fix you. I can get you transferred. I'll get you jammed up." She then said in substance, "They will believe anything I say." Birong believed that when she said "I'll get you jammed up", Person A meant "that she would affect his job. She would get him in trouble at work." Birong said "those trigger words" made him "nervous."

In the past, Birong had heard Person A "yelling and complaining and telling him stay out of her business, it's her money, she will do what she will." But this particular conversation stood out in his mind as the most threatening. The threat occurred in January or February of 2012, one to two months before Person A accused Respondent of threatening her.

After Respondent got off the phone, Birong said, "You better be careful. I think she is serious. She is going to jam you up."³ Respondent dismissed Birong's concern, saying, "I know Person A, she is not going to do that to me."

Birong testified that in other conversations, Person A would say in substance, "Oh, you think you're a smart guy, Joe, you got it all figured out. See if you're laughing later." When Respondent would question Person A about money, Person A would say, "You can afford it, you're a high roller, you live in a nice big house, you go out to dinner a lot. You can afford it."

Birong clarified that in the same conversation which concerned him and in which she said, "They'll believe anything I say", Person A indicated in substance, "I would like to see you afford your lifestyle when you get jammed up, can't get overtime."

Birong did not see the need to report what he had heard to the Department "because it was mostly stuff of a financial nature, not a criminal nature." Also, Respondent had convinced Birong "that he understood Person A and this was just another attempt of her to scare him into giving her more money."

During these conversations, Birong never heard Respondent threaten Person A.

In response to the Court's questioning, Birong explained that "everything was okay when they were planning picking the kids up, dropping the kids off, what day I'll (Respondent) take them. There was never an argument about taking the kids more or less. Every time Joe said something about money that's being spent, should be spent on the kids that wasn't, every time he questioned her about it, her tone changed immediately and she just became combative."

³ Birong explained that he meant "get you in trouble at work".

On further direct examination, Birong indicated that during the three years that Birong worked and commuted with Respondent, he never heard Respondent express any suicidal tendencies. Respondent never told Birong that he was suicidal and Birong never heard Respondent telling that to anyone else. When asked if he ever had any concern that Respondent was suicidal, Birong stated, "Not for a second."

On cross-examination, Birong confirmed that once the subject of money arose, the conversation would take a turn and that Person A would become heated. Birong denied that Respondent would also become heated, maintaining, "I have to say, Joe kept his cool in a very tough situation. I was there present in the car. It may have been for my benefit because I was in the car, but he never lost his temper in front of me on the phone with her." He explained that Person A "was acting more angrily" and Respondent "was trying to get to the point." When he asked where was the money going, Person A would say "You don't have the right to ask me where the money was going." Birong testified, "Joe came off a lot clearer and less emotional in these conversations than Person A did."

When questioned by the Court if Birong ever heard Respondent angry, Birong replied, "I could tell that he was angry, but he didn't come across it. He was controlling himself. He was either driving or sitting in the passenger seat of a car, and would just try to breathe and just be cool through a tough situation."

Birong confirmed that the conversation in which Person A made a threat happened within a month or two before Respondent was arrested.

When asked if this conversation happened as Birong described, would not Person A have made her charges sooner than a month or two later, Birong said, "Not if it was planned."

Conversations between the couple would happen once a month, sometimes three times a month closer to the day. In the beginning, the divorce seemed “amicable”, Birong testified, but “the closer to Joe's pending wedding, it started to get worse.”

Birong confirmed that every time Person A was mad, it was about money. Birong clarified that she did not make threats every time she was mad about money, but that her comments “increased in severity towards the end.”

Besides the argument that concerned Birong as “very severe, and that was shortly before Joe got arrested,” Birong described the other arguments as regular ones with “a [REDACTED] that we never find out about.”

Birong added, “In my recollection from a year ago, I had this feeling for quite sometime that she was going to get Joe in trouble, and it didn't happen immediately afterwards. It happened within a month.”

Birong agreed that after he heard this severe argument, he kept carpooling with Respondent, who had continued phone conversations with Person A during the car rides. Birong said that it was possible that they had more arguments about money. Birong “wasn't paying much attention,” he testified, “because it wasn't that serious.”

Birong said he had met Person A. She never threatened Respondent's livelihood with his job in Birong's presence. Birong added that when the three of them were together, there were usually children around and they were at a family function. When he was around Person A and Respondent, he did not remember any arguments or disagreement.

When asked why he did not report Person A's threat, Birong said, “I didn't feel that it was of a criminal nature.”

The Advocate asked the following question: You didn't feel it was of a criminal

nature, but you heard a person directly threaten a member of service with some sort of consequence concerning his job; did you not? Birong then replied, "Financial consequence."

When further questioned, Birong explained that it was common for [REDACTED] of police officers to make financial threats. He emphasized, "I didn't think it was noteworthy for me to tell the Department." He also explained, "Jammed up to me means get you in trouble at work, not in trouble with the law."

Getting jammed up "could mean anything from just being looked at differently, to being investigated, to being modified, suspended, it could mean anything of the above. Anything negative that happens at work." When asked if he should report a threat that could lead to either modification or suspension, Birong replied that he did not feel that it was his responsibility to report this particular incident.

On redirect examination, Birong reconfirmed that he did not believe that Person A's threat "was of a criminal nature". Also, Respondent allayed his fears that Person A would try to hurt Respondent when he told Birong that Person A was "just barking".

Respondent

Person A has been a member of the Department for 17 years. He has worked as a detective in the Intelligence Division investigating criminal activity nexuses to terrorism trends. When he worked at TD 2 and previously in Midtown South, he was a patrol supervisor. He has held the rank of sergeant for over 12 years.

Before this set of charges, he has never been subject to disciplinary charges by the Department. He has received several commendations. One of them was for the seizure

of 7 million dollars, which was the highest civil seizure of money in the Department's history. Another commendation was for a loan sharking racketeering case in which as a case officer he ran a wire. That case resulted in a 25 year to life conviction of a member of the Genovese Crime Family. Respondent has received letters of commendation from the State Department for working on Condoleezza Rice's protection detail and letters of commendation from the U.S. Department of Agriculture for money laundering and food stamp investigation cases.

Before Person A filed these charges, Respondent was ready to enter the Emergency Service Unit, and had submitted several applications with other branches of the Department.

He [REDACTED] Person A in August of 2000. Their three children, [REDACTED] [REDACTED] are 11, 8 and 6 years old. In 2009, he stopped living with Person A and his family. The divorce was finalized in 2010.

Respondent had visitation two times a week and every other weekend. Because Respondent coaches all of the children in their extracurricular activities and is "heavily invested" in his community, he would see his children anywhere from five to seven times a week.

When asked by the Court what he meant about being "heavily invested", Respondent explained that he is invested in the church and is on the board of his town's softball organization. He brings his children to church services, church functions, and Sunday school where his children meet and socialize with other children. One of his daughters plays softball and he coaches her. He brings his middle daughter to gymnastics and karate and his son to football, wrestling and baseball. He coaches all three of them.

His dealings with Person A about shuttling his children to all these events have been "amicable." The divorce became less amicable when his relationship became more serious with the woman who is now his wife and for whom he left Person A.

In March 2012, he had not yet [REDACTED], but was expecting that he would. He explained that his relationship with Person A changed and referred to her statement on the 911 tape. There Person A called Respondent's fiancée "a 27-year-old young girl." Respondent described his current wife as 15 years younger and "a little more attractive" than his [REDACTED]. His current wife is a very successful certified public accountant who makes a good living and supports them. His children like his current wife who would also come to all their sports events and treat the children "like they were her step kids." All of this "was creating a bit of a hostile situation" between Respondent and Person A.

Respondent started to notice a "drop off" in his children's grades. Respondent's mother, who had worked for the New York City Department of Education for 35 years, had arranged for a teacher to tutor his children. The children's tutor told Respondent that she was not coming anymore, or would only come when the children were with him. When Respondent asked why, the tutor said, "Your [REDACTED] does not pay me. She refuses to pay me. She says get the money from you."

His oldest daughter had a little lisp, which Respondent testified "was easily correctible, because she is a straight A student." The school district told Respondent that because his daughter is a straight A student and the lisp does not impact her learning, they would not give her services.

Respondent was concerned that later in her life the speech impediment might affect his daughter's social life. He testified, "Kids are very rough, they make fun of kids

with speech impediments” Respondent wanted her to attend a private institution where, after two days a week for about two to three months, he believed that her problem could be corrected. However, the program cost money and Person A refused to pay.

Respondent confirmed that at the end of 2011, 2012, money had become an issue between Person A and him. He agreed that he had telephone conversations with Person A about money. Respondent confirmed that he would speak with Person A during his commute to and from work.

During their conversations, Respondent said that Person A “would start off normal.” Once she felt that Respondent was attacking her character or her job as a mother about money or their children’s education, Person A would become very hostile. She made threats several times.

Once she said in substance, “Don’t forget, I have been with you 12 years. I was with you when you were a cadet before that, when you were going through the Academy. I heard all the stories. I know exactly how your guys get screwed. I know exactly how to jam you up.”

Respondent confirmed that she made the direct threat to which Birong referred and in which she said, “I know they will believe what I say.” Respondent said that she made that threat more than once to him over the phone and in person.

She made these threats at ball fields in front of his fellow softball coaches and other people. Once it was so bad that the person running the softball organization had to tell Person A to leave the field. These difficult conversations first started when Respondent proposed to his current wife in the summer of 2011. Person A became angrier as the wedding day in June 2012 approached.

On March 26, 2012, Respondent went to Person A's house. When Respondent came into the kitchen, his middle daughter was seated at the counter finishing up her homework, his oldest daughter was going out into the garage to get her softball bag, and his son was playing video games in the other room. He kissed his children hello, found out what his middle daughter was working on, said good-bye, and left.

He did have a conversation with Person A about money which they had already been discussing throughout the day. They had discussed "the misappropriation of the child support money." Respondent had told her, "Remember, I have been an investigator for how many years. I compiled all the documentation on this, and I am just asking you to do the right thing. The children are coming over saying that the tutors are not being paid. The children are coming over saying you are not buying them clothes. I am getting notes from the school that they are not being given their lunch money, that they are showing up without their lunch money You have to start paying more attention to the children. . . . I know you are dating a couple of different men right now. If you need time to sort out who you want to be with, I understand. I was lucky, I found it. I want you to be the same."

Person A, according to Respondent, turned around and said, "You are not taking my kids from me."

Respondent said, "I am not trying to take the kids from you. I said I am just trying to give you some space. . . . But what I will tell you is that if you continue the course of conduct with not paying attention to the kids, paying for their tutors, paying for their clothes, what I will do is take you to family court. And I researched, and I can have your child support money - not your maintenance - your child support money put on a

family court issued debit card where they will track your expenditures. . . . You had a recent breast augmentation, which is at least \$8,000. You bought a brand new car. . . . The kids tell me when I ask them why doesn't mommy buy you clothes, they say, 'Oh, she had to get a new handbag.'”

Then Respondent told her, “Just get your act in order.” Respondent explained that Person A “had no means for gainful employment.” This conversation occurred all during the day, through text messages and on the phone.

At the house, Person A told him, “Don't try and take my money from me. I know what to do.” Respondent said, “Person A, I am not getting into an argument with you, especially with the kids here. We are not arguing in front of the kids. I said what I have to say, I'm serious. Just do the right thing. Good-bye.”

And he left with his daughter at about 5:00 p.m. for the ball field around the corner to coach 17 girls at the softball practice for two hours. Around 7 p.m. when he returned to the house he was very surprised to see two Suffolk County police cars in his driveway. He thought that something had happened to either his [REDACTED] or to his children. He told his daughter to stay and got out of the car.

An officer approached him told him that his [REDACTED] had said that he threatened her. Respondent said, “How did I threaten her, I was just at a softball practice.” The officer said in substance, “Oh, she is saying you threatened her before.”

Respondent “adamantly denied it,” showed the officer the text messages between Respondent and his wife from earlier that day and explained the entire day's conversation. The police officer told him that Person A wanted him arrested.

Respondent stated that on March 26, 2012, he never threatened his [REDACTED] and never threatened to kill her.

Respondent identified a photo of a phone with text messages between Person A and him. Respondent testified that these were the same text messages that he referred to that were sent on Monday, March 26, 2012 (Respondent's Exhibit [RX] A).

Respondent stated that since the incident on that day, Person A has "not officially" made any other new allegations against Respondent.

When asked by the Court what did Respondent mean by "not officially," Respondent explained that his [REDACTED] knows his Achilles' heel. Respondent will do anything for his children. He continues to discuss money with Person A, and "at times she does still get heated." Respondent tells her, "Remember, you made an allegation against me and you thought it was going to benefit all of us involved, and it didn't. It actually hurt everybody involved. . . Even if you end up getting me . . . the only thing that's going to happen, if I end up losing my job, we will end up losing the house."

Person A still threatens in substance, "I can still follow through, I can still do this, I can still do that to you."

Other than threats, Respondent maintained, not much happens. Respondent tries to "keep the conversation very clinical," to topics about what time he will pick up the children.

On cross-examination, Respondent explained that he does not entertain the threats that Person A makes toward him. If he sense a threat is coming, he immediately walks away. When he goes to the house to pick up the children, he now refuses to enter. He stays outside in front of a camera that he had installed on the house so he is clearly visible. He

stays right in front of that camera and keeps his hands in his pockets so there is no room for misinterpretation. He communicates with Person A through text messages and his wife.

Respondent reiterated that when he got to the house that day he told Person A in substance, "I am very serious. I have the documentation. Just get your head on straight and do right by the kids." He confirmed that was all that he said to Person A. There was no back and forth between them at the house. He agreed that he did not want to have this conversation with his [REDACTED] in the house in front of the children.

When asked if the conversation with his [REDACTED] had become irritating, Respondent replied, "To her, exhibited by her behavior." After he went inside the house, and checked on his child's homework, he turned around and Person A wanted to continue the conversation. Respondent "dismissed the conversation" by saying, "I'm serious about what I talked to you about before. That's it, I'm going to softball practice." He then left.

He denied walking up to her, cornering her and threatening to kill her. He denied that Person A angered him.

He agreed that he is accusing his [REDACTED] of financial impropriety and being irresponsible with his children's welfare. When asked if his [REDACTED]'s irresponsibility angered him, Respondent said, "There is nothing I can do about it." Respondent indicated that because he "was the bad guy" who was unfaithful, and his [REDACTED] would like to punish him for "the rest of his life."

Respondent described the terms he agreed to in the divorce, which was amicable and negotiated with a mediator. Against their mediator's advice, he gave Person A enough money to cover the cost of running the entire house. Respondent gave Person A \$4,300 a month, plus \$560 in health care. In addition with the mortgage on the house being over

\$2,000 a month, Respondent asked Person A to put 50 percent of the proceeds from the sale of the house into a trust fund.

Person A told Respondent, "Yes, I agree, that's enough money. Thank you very much. We can be friends. Everything can work out. I don't have to worry about my financial well being." At the time of the agreement, she would now own the house in five years.

Then after he signed the house over to her, Person A refinanced the house to a 30 year mortgage, dropping her mortgage payment now down to \$500 a month. "So, I mean, when is enough money enough money?" Respondent said, "And I just said to her that. I said, you know, there is no way that you can't -- and this is the conversations we were having during the day. There is no way you can't say you have enough money when you have amicable means."

When asked whether his [REDACTED]'s actions with the money that he gave her angered him, Respondent replied that they have not angered him, but "they are frustrating me because there is nothing I can do about it." He asked the family court attorney if he could get a modification or a reduction in what he pays. The attorney told him, "You signed for it, you're on the hook for it."

Respondent then said, "So I took my current wife's advice of, hey, you are always working, or you are always around, and you thought she was a great mother. Obviously, it was a charade over the years, and now you see what the scenario really is."

The Advocate then asked was not Respondent actually admitting that when Person A tried to talk with him in the kitchen that day, out of frustration, he threatened to kill her. Respondent replied that he never said that he would kill her. Respondent speculated that

Person A “probably thought that if she jammed me up, it would strike down on my Achilles’ heel.” She probably thought he would lose his visitation rights, and could not then coach his daughters’ and son’s activities.

FINDINGS AND ANALYSIS

Specification No. 2

Specification No. 2 states that on March 28, 2012, Respondent threatened Christine Dimanti by saying, “Fuck me, you’re going to die bitch.” In its motion to dismiss this charge, the Department explained that Dimanti never made a complaint to the Department. When Dimanti received the threatening phone call on March 28, 2012, she did not recognize the voice and was not sure who it was. She went to Person A’s house to get advice. Person A listened to the call, decided the voice belonged to Respondent and called 911. Department investigators found no calls made from any of Respondent’s phones to Dimanti’s telephone at the time and date alleged.

Respondent’s counsel added that at the time the call was made Respondent was attending a meeting with 15 other members of the Department. Also, the trace of the call revealed that the area code was 631, an area code not Respondent’s and leading Dimanti to suspect the caller was an ex-boyfriend of hers.

Finally, the Department noted that when the investigator spoke to Person A about this complaint, she declined to re-articulate why she thought Respondent made the call. The Department’s motion to dismiss is granted.

Specification No. 1

On March 26, 2012, Person A, Respondent's [REDACTED], called 911 to complain that Respondent had just been in her home and threatened to kill her. She claimed that he said he had lost everything and he did not care. He told her, "I'll fucking kill you." Respondent denied this allegation.

Lieutenant Richard Langmaack testified that, in August or September 2102, Person A informed him that although Respondent did threaten her, she was not interested in punishing Respondent further and testifying against him. As Person A did not appear, the Department submitted the 911 tape and called Langmaack as its sole witness.

Langmaack was not the officer who interviewed Person A on March 26, 2012, and never met with her in person. He did not interview the children who might have seen what happened that day in their home. His entire knowledge of the case was based on his review of a summary of Person A's initial interview the night of her call, the arrest record and the 911 call. The criminal case in Suffolk County against Respondent was dismissed. He did not know how soon after the event that Person A made the phone call, whether she had called other people before she called 911, whether she called from her cell phone or house phone or whether she was at home when she called. Apart from Person A's 911 call, he found no evidence to corroborate the allegation that Respondent threatened her.

Respondent's attorney raised significant questions about Person A's credibility. In her 911 call, Person A claimed that Respondent was threatening to commit suicide in some text messages he sent her. These messages were never submitted as evidence. Langmaack testified about two messages, but could only remember the content of one of

them. He thought that it said in substance, "I can't believe what my life has come. Please tell me you can handle the kids without me."

Respondent explained that he was talking about having to go overseas to get work and not being able to take care of the children every day. Langmaack never found a single text message from Person A in which Respondent threatened suicide. The psychologist who Respondent saw gave no indication that Respondent posed a danger to himself. In sum, Langmaack never found any evidence or interviewed anyone who indicated that Respondent was suicidal.

Police Officer John Birong used to commute with Respondent to work. He testified that he overheard Person A telling Respondent over the cell phone, "You think you can push me around, you think you can hold money back on me. I'll fix you. I can get you transferred. I'll get you jammed up." Birong stated Person A said in substance, "They will believe anything I say." Birong explained that he understood that Person A was threatening to get Respondent in trouble at work. He warned Respondent to be careful. He also had heard other phone conversations in which Person A would become irate whenever Respondent raised the subject of money.

Respondent explained that the divorce had been an amicable mediation. Respondent had left the house and enough money to Person A so that she would never have to worry. He had left Person A for a young, attractive, financially secure professional woman. As the day of his [REDACTED] approached, Respondent started to notice that his children's grades were slipping. The children's tutor told Respondent that Person A had not paid her. Respondent's children told him that Person A was not buying them new clothes

and the school was calling him about his children coming there without lunch money.

Meanwhile, Person A had a breast augmentation and bought a new car.

Respondent said that when he confronted Person A about what was happening to the money for the children and their education, Person A would become hostile and defensive. She would express outrage that he was now living so comfortably and indicate that she could cause him problems with his job.

On the day Person A claimed that he threatened her, the two were engaged in an ongoing conversation and text message exchange about Person A's mishandling their children's funds. In support of his testimony, Respondent submitted their text messages into evidence (RX A).

Respondent testified that when he came to Person A's home to pick up his daughter for softball practice, he warned Person A that he had been keeping records documenting her financial activities. She became concerned that he was going to take the children away from her. He told her that he would not do that. But unless she started to "do the right thing," he would ask the Family Court to place Person A's child support money on a debit card which would track her expenditures. Then Respondent left with his daughter for softball practice. When he brought his daughter home, he was surprised to see the police.

Respondent's testimony was credible and supported by Birong's testimony and Respondent's unchallenged testimony about his distinguished career in the Department.

The Department's strongest evidence of a threat was the 911 call. The call was made at 5:55 p.m. The Department's charge does not specify the time of the incident, nor does any testimony submitted by the Department indicate the time of the incident. The only testimony that illuminates when this threat occurred was from Respondent.

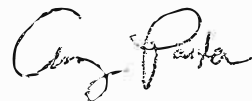
Respondent testified that he left to coach his daughter's softball team at about 5:00 p.m. The Court is left to conclude that there was at least a 55 minute delay and the call was not made contemporaneously with the incident. While the 911 call, as hearsay evidence, is admissible in this forum, the delay renders Person A's call inherently unreliable as a "present sense impression" or an "excited utterance." See *People v. Vasquez*, 88 N.Y.2d 561 (1996). Even if the Department could demonstrate that the 911 call happened immediately after the threat, the evidence of this call by itself without corroboration cannot sustain its charge.

Respondent's attorney argued that Person A considered how she would punish Respondent and that the 911 call demonstrates her plan. Her delay in calling, her telling the operator that Respondent worked for the Department, and particularly her reference to Respondent's young wife along with her tone of voice indicated anger, not fear.

Finally, Person A's decision not to testify at this proceeding denied Respondent the opportunity to cross-examine her and this Court the opportunity to evaluate her credibility. The Department has failed to provide sufficient and reliable evidence. Therefore, Respondent is found Not Guilty.

APPROVED
MAR 28 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,



Amy J. Porter
Assistant Deputy Commissioner – Trial